

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. S-2704**

**PETITION OF BARBARA E. DIEDERICH**

OPINION OF THE BOARD

(Opinion Adopted: October 3, 2007)

(Effective Date of Opinion: October 25, 2007)

Case No. S-2704 is an application for a special exception, pursuant to Section 59-G-2.00 of the Zoning Ordinance, for a special exception to permit an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on September 10, 2007, closed the record in the case on September 17, 2007, and on September 20, 2007 issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 1, Block 20, Stoneybrook Estates, located at 4205 Havard Street, Silver Spring, Maryland, 20906, in the R-60 Zone.

Decision of the Board:                      Special Exception **Granted** Subject to  
The Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on October 3, 2007. After careful consideration and review of the record, the Board notes, as did the Hearing Examiner, that review and enforcement of any private covenants is not within the jurisdiction which Montgomery County Code Section 2-112 gives to the Board of Appeals. On a motion by Wendell M. Holloway, seconded by Catherine G. Titus, with Donna L. Barron, Vice-Chair, Caryn L. Hines, and Allison Ishihara Fultz, Chair in agreement, the Board adopts the Hearing Examiner's Report and Recommendation and grants the special exception subject to the following conditions:

1. Petitioner shall be bound by all of her testimony and exhibits of record, and by the testimony of her witness and representations of counsel identified in the Hearing Examiner's Report and Recommendation and in this opinion;
2. Occupancy of the accessory apartment is limited to no more than two unrelated persons or a family not to exceed three persons;

3. The Petitioner shall take steps to correct the following deficiencies set forth in the September 5, 2007 Memorandum of Timothy Pillgreen, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 15) prior to occupancy:
  - a. The front bedroom window must be enlarged to meet Code Standards for egress: The window shall be at least (5) square feet in net clear opening. The window must be openable without the use of a tool with a minimum net clear opening height of 24 inches and a minimum net clear opening width of 20 inches, with the bottom of the opening not more than 44 inches above the floor.
  - b. The small bedroom does not meet code standards for minimum width and must be used for storage.
  - c. The driveway can accommodate 4 cars, parked lengthways.
  - d. The motorcycle in back of the house must have a current tag or be removed.
  - e. The bushes in back of the house must be cut and maintained. The garage door in back of the house requires paint.
  - f. The basement door by kitchen must not have furniture or storage material that blocks egress.
  - g. The ventilation fan in the bathroom must be repaired.
  - h. The cat odor emanating from upstairs into the cellar apartment must be eliminated.
4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. There must be no guest room for rent, boardinghouse or registered living unit on the premises in addition to the accessory apartment. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;
6. Petitioner shall have any new tenants of the accessory apartment, and the existing tenant if he remains at the expiration of the current tenancy term, sign a lease agreement, for a minimum of one year, with clearly stated provisions controlling noise, litter, pets, parking and other activities and actions that could have an adverse impact on neighboring properties. Petitioner will continue to be responsible for insuring that noise, litter, pets, parking and other tenant activities and actions that could have an adverse impact on neighboring properties are avoided;
7. The tenants of the accessory apartment may have no more than two cars, in total, housed within the general neighborhood, and Petitioner must make available to the tenant at least one parking space in her driveway; and
8. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 25<sup>th</sup> day of October, 2007.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.